APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-653

WILLIAM SWISHER, ET AL.,
Appellants,

v.

DONALD BRADY, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

DOCKETED NOVEMBER 7, 1977
PROBABLE JURISDICTION NOTED NOVEMBER 28, 1977

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DOCKET ENTRIES

Brady, et al. v. Swisher Y-74-1291

1974

Nov. 25—Motion of plaintiffs to proceed in forma pauperis; Order (Miller, J.) granting leave as prayed; points and authorities and (9) affidavits.

Nov. 25—Complaint.

—Nov. 25—Summons issued. (Each served- 26 November 1974).

Nov. 25—Application for 3 Judge Court; points and authorities in support thereof; and attachments.

Dec. 10—Notification and Request (Thomsen, J.) to constitute a Three Judge Court.

Dec. 17—Motion of Defendants and Order (Thomsen, J.) extending the time within which Defendants may file a responsive pleading to and until and including January 6, 1975.

Dec. 20—Order (Haynsworth, Chief Judge, U.S. Cir. Court of Appeals) dated 17 December 1975, designating Honorable Harrison L. Winter, U.S. Cir. Judge, Honorable Edward S. Northrop, Chief Judge, U.S. District Court, to serve with the Honorable Roszel C. Thomsen, Senior United States District Judge, to constitute a Three-Judge Court.

1975

Jan. 6—Motion of Defendants to Dismiss Complaint and Memorandum of Law in Support thereof. (Two copies submitted).

Feb. 6—Request of Plaintiffs for Production of Documents and Things for Inspection, Copying and Photocopying propounded to James Klair and Bernard Raum, Attorneys for Defendant James Benton.

Feb. 7—Answer of Defendants to Request of Plaintiff for Production of Documents and Things for Inspection, Copying and Photocopying.

March 7—Petition of Plaintiffs for the Issuance of Subpoenaes at the Expense of the United States Government and Order (Thomsen, J.) GRANTING same as prayed.

March 11—Notice of Plaintiff to take Deposition of the Honorable U. Theodore Hayes, on March 14, 1975.

March 12—Petition of Petitioner for the Issuance of Subpoenaes at the Expense of the United States Government and Order (Thomsen, J.) thereof.

Apr. 7—Motion of Plaintiffs for Certificate as a Class Action. (Copies Submitted).

Apr. 10—Answer of Defendants in Opposition to Motion of Plaintiffs' Motion For Certificate as a Class Action.

Apr. 21—Memorandum of Plaintiffs in response to Defendants' Answer in opposition to Motion for Certification as a Class Action. (2 cys. submitted).

July 17—Motion of Respondents and Order (Thomsen, J.) authorizing Respondents to file a supplemental pleading in a form of a motion to dismiss. (Copies submitted).

July 17—Motion of Respondents to Dismiss. (Copies submitted).

Dec. 8—Memorandum of Plaintiffs' in Response to Motion of Defendants to Dismiss. (cys. submitted).

Dec. 8—Motion of Plaintiffs for leave to file Supplemental Pleading, Points and Authorities in Support thereof, Proposed Order. (cys.)

Dec. 8—Motion of Stevie Jacobs, Dennis Green and Steven Stencil for leave to intervene as plaintiffs, Points and Authorities in support thereof, Proposed Intervenors' Complaint, and Proposed Order (2c/s).

Dec. 22—Order (Winter, U.S. Cir. Judge) Designating Honorable Joseph H. Young, U.S. District Judge, in the place and stead of Honorable Roszel C. Thomsen, U.S. District Judge, to Constitute a Three-Judge Court. (Copies mailed to counsel 12-23-75 now).

1976

Jan. 27—Scheduling Conference held before Young, J.

Feb. 17—Order (Young, J.) "Granting" motion of plaintiffs for leave to file supplemental pleading. (See paper No. 20) (Cys. mailed 2/23/76).

Feb. 17—Supplemental Complaint. (See paper No. 20).

Feb. 17—Order (Young, J.) "Granting" motion of Stevie Jacobs, Dennis Green and Steven Stencil for leave to intervene as party plaintiffs. (See paper No. 21) (Cys. mailed 2/23/76).

Feb. 17—COMPLAINT of intervening plaintiffs, Stevie Jacobs, Dennis Green and Steven Stencil. (See Paper No. 21).

Feb. 17—Motion of respondents to dismiss and memorandum in support thereof. (C/S) (Received for filing February 13, 1976).

Feb. 20—Motion of Paul Meadows for leave to intervene as party plaintiff, points and authorities in support thereof, proposed order and proposed complaint. (c/s).

Feb. 20—Memorandum of plaintiffs in opposition to motion of defendants to dismiss, and attachments. (c/s).

Mar. 4—Motion of defendants for Relief from Order granting Leave to Intervene filed on February 17, 1976, and in opposition to Motion of Paul Meadows for Leave to Intervene as Party Plaintiff, Memorandum of Points and Authorities in support thereof, and Exhibits A through D. (c/s).

Mar. 5—Hearing on Motion of defendants to Dismiss, held before Young, J.

Mar. 5—Order (Young, J.) "DENYING" Motion of defendants to Dismiss. (See Paper No. 27).

Mar. 26—ANSWER of defendants.

Apr. 13—Petition of plaintiffs, and Order (Young, J.) that the Clerk issue and the U.S. Marshal serve

subpoenaes on The Honorable Paul A. Smith, The Honorable Howard Golden, Joseph Szuleski, E. Nicholson Gault, and James Louis Benton, Jr. at the expense of the United States Government.

Apr. 19—Evidentiary hearing held before Young, J.

Apr. 19—Not concluded — to be continued at a later date.

May 18—Joint Stipulations of Fact re: Testimony of E. Nicholson Gault, and Attachments. (c/s).

May 18—Joint Stipulations of Fact re: Testimony of Paul A. Smith. (c/s).

May 18—Joint Stipulations of Fact re: Testimony of Howard Golden. (c/s).

May 18—Joint Stipulations of Fact re: Testimony of Joseph Szuleski, and Attachments. (c/s).

May 21—Motion of Eugene Fields for Leave to Intervene as Plaintiff, Points and Authorities in support thereof, Proposed Intervenor's Complaint, and Proposed Order. (c/s).

May 25—Stipulation of Counsel, Re: Testimony of Hon. Robert L. Karwacki. (c/s).

May 25—Joint Stipulations of Fact, Re: Testimony of Leonard Briscoe, Theodore Hayes, John O'Grady, Bernard Peter and Bright Walker.

May 27—Supplemental Pre-trial Memorandum of defendants. (c/s).

May 28—Hearing held before the Court, Winter, Cir. J., Northrop, C.J. and Young, J.

May 28—Argument of Counsel.

May 28—Hearing not concluded — to be resumed Tuesday, June 1, 1976.

June 1—Hearing continued from May 28, 1976.

June 1—Motion of plaintiffs, and Order (Winter, Cir. J.) that William Swisher is substituted for Milton B. Allen and E. Nicholson is substituted for Barbara Daly as Party Defendants. (C/M).

June 1—Argument of Counsel (continued).

June 1—Held sub-curia.

July 20—Certified copy of Masters's Report and Recommendation and Order of Court thereon filed in the Circuit Court of Baltimore City, Division for Juvenile causes, dated June 18, 1976.

1977

June 20—Motion of Plaintiffs and Order (Young, J.) Substituting Sheldon Mazelis for E. Nicholson Gault, as a Party Defendant. (c/m 6/23/77 v.s.)

Sep. 16—Memorandum and Order (Winter, Circuit Judge, Northrop, C.J., and Young, J.).

Sep. 20—Judgment: 1) That Md. Ann Code Cts. & Jud. Proc. Art. Sec. 3-813 and Rule 910e (Rule 911c) Md. Rules of Procedure are unconstitutional to the extent that these provisions permit the State to file exceptions (a) to a juvenile court master's finding of non-delinquency and try the juvenile a second time, before the juvenile court judge, or (b) to a juvenile court master disposition and seek a new disposition before the juvenile court judge; 2) That defendants, there agents, employees, persons acting in concern with them, and their successors in office are enjoined from taking exceptions to findings of non-delinquency or from taking exceptions to disposition pursuant to Md. Ann. Code Cts. & Jud. Proc. Art. Sec. 3-813 and Rule 910e, Rule 911c, Md. Rules of Procedure. Order (Clerk) dated September 19, 1977 with approval of the Court (Young, J.) thereon. (c/m 9/19/77).

(Oct. 14—Notice of Appeal of Defendants to the Supreme Court of the United States.

Oct. 17—Letter to Counsel, — Re: possibility of preparation of Record on Appeal, pursuant to Rule 12, Rules of the Supreme Court.

WHAT MAY BE FOUND IN THE APPENDIX TO THE JURISDICTIONAL STATEMENT

1. Memorandum and Order of the District Court
2. Notice of Appeal to Supreme Court of the U.S.
3. Pertinent Constitutional Provisions, Statutes and Rules
   a. Fifth Amendment to U.S. Constitution
   b. Courts and Judicial Proceedings Article, Section 3-813 (Md. Code)
   c. Maryland Rules of Procedure, Rules 910-911

EXCERPTS FROM TESTIMONY OF EVIDENTIARY HEARING HELD ON MARCH 17-18, 1975

JAMES BENTON

(T. 25, 41)

* * * * * *

A. A case becomes a case when a Petition is filed in my office which has been submitted from the police to our intake department to the State's Attorney's office, who, then, following a review would give it a number and submit it back to the Intake department for authorization, which is then forwarded to me to be filed as a Petition which would be scheduled for Hearing before our Court.

* * * * * *

Q. Now, after the Juvenile Services Intake consultant authorizes the Petition by signing it and dating it in the lower left hand corner, what, then, happens to that Petition? A. These Petitions are then forwarded to my office which is designated the Clerk's Office for preparation as to filing and scheduling for arraignment in the case of delinquency cases.

* * * * * *

MASTER AVRUM RIFMAN
(T. 9-10)

* * * * * *

Q. Master Rifman, you testified earlier that your duties included Hearings, Adjudicatory Hearings charging delinquency; briefly describe to the Court what occurs at an Adjudicatory Hearing in which the respondent is charged as a delinquent?

(Mr. Raum) Objection, Your Honor. He has already stated he takes testimony and holds a Hearing and makes findings of facts and recommendations.

(The Court) I'll take it subject to exception.

(Mr. Raum) I'm sorry; I was just trying to keep the record in some kind of containable fashion. That's all.

(The Court) Well, let's go off the record.

(Whereupon, there was an off the record discussion.)

(The Witness) When the case is called for trial in the morning, we must make sure — I make sure that counsel representing the Defendant — the majority of cases are indigent cases and we have the Public Defender system in full operation.

The State, of course, is represented by the State's Attorney.

(The Court) Is there always someone from the State's Attorney's office there?

(The Witness) Yes, sir. In every delinquency case, we cannot proceed to conduct a Hearing unless and until the State's Attorney is present, unless the Defendant — the Respondent, we call them, and his parent have knowingly waived the right of counsel and, then, we must make sure that all the constitutional rights are given to the youngster and his parents. In some instances, very few instances, the parents don't want counsel and then they can't get the appointment of the

Public Defender because they're above the poverty level. I might say they do just as well because we have greater concern, if possible, where they are unrepresented, than if they were represented. Sometimes, we lean backwards to make sure that every constitutional right is protected.

After that's done and the case proceeds to trial, we first read the Petition to the Respondent. The Petition is very brief and it's a summary of the statutory evidence. Usually, denial is entered. In these cases where there's an admission, the admission must be signed by the Respondent, by his parent or guardian ad litem and the Public Defender.

Then, after that, we take the admission and we advise the right of the Defendant to have a plea disposition investigation. In many cases, they decide to have a disposition held that day and in an equal number of cases they decide to have an investigation and report.

* * * * * *

HONORABLE ROBERT I. H. HAMMERMAN
(T. 122-125)

(The Witness) I thought I — I may have misunderstood the question. I thought I already responded to that question when I indicated the degree to which I read the memoranda which was that I don't read them thoroughly, except in some cases. I will peruse them, usually, but not a reading in the sense we talk about a reading of them.

Q. You had made that reference earlier in connection with another question but it was not actually posed as a question to you and I wanted to be sure it was in the record.

Now, to what extent, Judge, does the reading of the memoranda in those cases in which you receive them and other materials in those cases where you receive other materials from the Master, enable you to know

what, actually, took place at the Masters' Hearing? A. You're asking to the extent that I read memoranda?

Q. Precisely. A. I would say that to the extent that I read or peruse the memoranda in the great majority of cases, I do not have a full understanding of what transpired before the Master at the Hearing before him.

Q. Judge, are you familiar with the provisions of Rule 908 of the Maryland Rules of Procedure? A. I believe so.

(The Court) Do you have it here so I can look at it?

* * * * * *

By Mr. Smith:

Q. Now, referring you to that portion of 908, which I believe is 908(e) which authorizes the Juvenile Court Judge to modify or remand a recommendation made in a case in which the Hearing was before the Master, 908(e) 2 and 3, I believe are the pertinent provisions. How often could you say that you have occasion, under that Rule, per year, to modify or remand a recommendation from a Master in a case heard before him and I want to make this clear—

(The Court) You mean, in the absence of an exception?

By Mr. Smith:

Q. I want to make it clear that I'm not talking about de novo Hearings before the Judge, simply where the cases which come to you, not de novo, on recommendations from the Master.

(Mr. Raum) Objection. For the record, objection, on the ground of non-exhaustion and relevancy.

* * * * * *

(The Witness) I would estimate and I personally keep no figures on this, maybe four to nine times a year would be an average.

(The Court) Four to nine times a year. You mean, you don't follow the recommendation, except where there is an exception?

(The Witness) That is correct, sir.

By Mr. Smith:

Q. That answer includes both modifications and remands? A. That's correct.

Q. Now, of these, approximately four to nine times a year, Judge, could you estimate how many of those occasions, the precipitating reason for your either modifying or remanding is your own action upon observing the materials before you and to what extent the precipitating reason is an outside force? A. I would say the majority of the times, it's outside forces, as you describe it.

(The Court) What do you mean, an outside force?

(The Witness) The outside force would be someone involved, an interest involved with, an interest in the case who does not follow the route of taking an exception but who comes to speak to me about the recommendation of the Master and as a result of that discussion, I would decide to modify or remand and reject the recommendation.

* * * * * *

MASTER PAUL SMITH

(T. 229-240, 245-247, 249-255, 258-259)

Q. Now, asking you to focus for a moment in the delinquency situation, Master Smith, on the adjudicatory Hearing, would you describe what takes place in such a Hearing when the matter is called before you for the commencement of that Hearing and follow it through. A. The delinquency cases, the order in which they're called is determined by the State's Attorney. He would indicate what cases he is calling and my Bailiff would take the folder containing the Clerk's file from the stack of other folders which may be, have been referred to me, on that day. He would have previously given to me one copy of that Petition, which we usually call the note copy of the Petition, to inform me of what the charge is. He would read the Petition. The State

would present its case. The witnesses would be called. They would be individually sworn. They would be subjected to direct testimony and then cross-examination. At the conclusion of the State's case, the defense, normally, makes a motion to dismiss. If it's denied, the defense would then present its case by presenting witnesses and have them sworn, individually, and at the conclusion of the defense's case, we would hear argument and after argument, reach a decision about whether the charge was or was not sustained.

Then, I would, in reaching the conclusion, announce my finding to the persons who are there at that time, explaining the reasons why I reached the conclusions that I did and, usually, referring back to the evidence which I heard and relating it to the elements of the offense and, I usually terminate the adjudicatory Hearing by announcing that I find the delinquent act to be sustained.

Q. Now, at the adjudicatory Hearing that you have just described, do you, in fact, observe the demeanor of witnesses who testify? A. Yes, each witness who is called, I observe the demeanor of that witness while he is sitting on the stand. As a practical matter, the Hearing Rooms are small. I look about the Hearing Room and observe the demeanor of prospective witnesses before they are called and after they are called.

Yes, I do take into consideration the demeanor of witnesses both on the stand and off the stand.

Q. Now, having stated that you observe it, what, if any, significance, then, do you attach to what the demeanor is of the witnesses who testify before you? A. Well, depending upon what their demeanor is, it may or may not help me in determining their credibility, and, usually, that's primarily how it's used.

Q. Do rules of evidence apply in your adjudicatory proceedings? A. Oh, definitely.

Q. And, what rules are they? A. In terms of the introduction of evidence, we apply the same rules that would be applied in an adult criminal proceeding.

Q. Who, if anybody, objects to — excuse me, who, if anybody rules on evidentiary objections posed at the adjudicatory Hearing? A. Well, the Master or the Judge if it is a Hearing before the Judge, who is presiding at that time.

Q. In reaching your findings, what standard of proof is applicable in the delinquency — adjudicatory Hearing? A. By statute, the standard of proof is that the trier of fact be convinced beyond a reasonable doubt.

Q. Now, asking you to focus upon the very end part of the adjudicatory Hearing, after the closing arguments that have been made and you're announcing your findings, could you specify, precisely or at least generally, what kind of words you would use in the typical adjudicatory-delinquency Hearing to communicate to the respondents your view as to the act, the delinquent act being sustained or not sustained? A. Well, based on experience, I find, sometimes, when we use the language which is included in the statute — it's a little different from Criminal Court language, and a lot of people do not immediately seize the meaning of what you mean when you say, "delinquent act sustained," so I normally analogize it to words I think they are familiar with, in other words, I say I find you did commit the act you are charged with. If this were an adult court, I would announce, you're guilty of the charge, I find you guilty. That's, basically, the language I use in almost every case.

Q. Now, a moment ago, you indicated that, in announcing your findings, you comment and summarize the evidence; do you reduce to writing any findings which you announce to the persons in the courtroom? A. During the conduct of the Hearing, as each witness is testifying, I make notes. In some cases, they are very copious notes, and in other cases they may be

sparce. At the conclusion of the Hearing, after listening to both counsel, sometimes I have to review them. Sometimes, I don't. Most of the time I don't have to review the notes. As far as reducing to writing, the findings, it is reduced to writing, primarily, by the phrase, "delinquent act sustained," rather than to recapitulate, in writing, what I have orally said was the basis for my finding.

On my notes, I enter the entry "delinquent act sustained," and at that time, or about that time, my Bailiff will enter the same words that I used, as a matter of fact, it's supposed to be verbatim in every case on the docket sheet which, ultimately, will be sent back to the Clerk's Office.

Q. You said you entered the words, "delinquent act sustained," obviously, in a case where that was your finding. A. Yes.

Q. Where do you enter those words?

(The Court) Where does he enter them?

(Mr. Smith) Yes.

(The Court) He said the Bailiff enters them.

(Mr. Smith) He said he did and his Bailiff did.

(The Witness) I enter them on my notes, usually at the end of my notes. My Bailiff enters them on the docket sheet.

By Mr. Smith

Q. Thank you. A. And, my Bailiff also would enter it on the assignment sheet.

Q. Now, in your courtroom, Master Smith, what, if any, practice do you follow respecting advising the respondent or his family that in the delinquency — in the adjudicatory Hearing, that your finding in the adjudicatory Hearing is a recommendation to the Judge? A. I don't make the recommendation during the adjudicatory Hearing. I don't give that advice or give that notice during the adjudicatory Hearing. I give

it at the conclusion of the adjudicatory Hearing. Normally, it would be reserved until the disposition Hearing, anyway because, as a practical matter, the finding I make would not be communicated to the Judge until after disposition is made.

Q. So, as of the time that the adjudicatory Hearing, itself, ends, setting aside for a moment the disposition Hearing, do you or do you not make any statement to the child at the end of the adjudicatory Hearing respecting your finding being a recommendation, only? A. All right. It would depend. If disposition is going to be made at that time because there is sufficient information in the Hearing Room that I have not yet been privy to, but I'm going to hear about, after reaching a finding, I would normally not give that advice until after disposition is made. This is on the assumption disposition is made immediately after the adjudicatory Hearing. Now, if disposition is going to be postponed or deferred until some other day, yes, at that point, I advise the youngster that he has a right to take an exception from my finding. He can take it on that day or within five days after that day or he may defer making that decision until after I have made disposition since he can take exception on the day of disposition or within five days after disposition.

Q. Now, focusing on the situation in which the disposition Hearing is postponed until a later date, that is, where you just have an adjudicatory Hearing that day, you just testified that you would advise the child, in that situation of his right to take an exception? A. Yes.

Q. Do you or do you not also advise the child at that point that your recommendation is a recommendation, only? A. No.

(The Court) I thought he did tell the child that he had the right to take an exception.

(The Witness) I do, but that wasn't the question.

(Mr. Smith) The question I asked now, however, was another question. That is, does he also advise the child

at that point that his finding is a recommendation, only, and his answer to that was no.

(The Witness) No, because I don't communicate that finding to the Judge at that point and it is not, is not what I consider to be a recommendation until such time as I'm recommending some action to the Judge. At that point, I'm not recommending any action to the Judge.

By Mr. Smith:

Q. Now, what, if any, practice do you follow at the conclusion of the adjudicatory Hearing, in which the child is, in which you announce that in your view, the child is not guilty or the charges are not sustained?

What, if any action do you take with respect to advising the child or his family of the right of the State to take an exception? A. All right, in those cases where I find that the evidence is insufficient to sustain the charge and I indicate that my finding at the end of that Hearing is that the charge is not sustained, I do advise the youngster that the State's Attorney has the right to take an exception and that if they do, he'll hear from the Clerk of the Court, but if the State's Attorney's Office does not, and he does not hear from the Clerk of the Court within a reasonable period of time, he can assume that the recommendation which I made, that the case, you know, the charge be not sustained is the final recommendation in that case.

Q. Now, you referred earlier to the fact that you take notes in a case which might be anything from copious to sparce, depending on the particular case? A. Yes.

Q. What do you do with those notes after you take them at the conclusion of the case? A. Well, since we're not a Hearing Room of record, everything we do in the Hearing Room, we basically annotate on a note copy of the Petition. This is a copy of the Petition which is blank on the back side. Everything that myself or any other Master does in connection with that particular case, which should be annotated on the back of the Petition, when it came in for arraignment, if it came in for detention Hearing. If anything else took place prior

to the adjudicatory Hearing, it would have already been annotated on that form before I began to enter my notes, but if I hold the adjudicatory Hearing and I find the charge to be sustained or if I find the charge to be not sustained, I keep the notes. Probably, no one else could understand them, anyway, as bad as my handwriting is and there is no procedure for sending them any place else. We maintain file cabinets in which they are filed by my secretary and used sometimes for further reference.

Q. Now, in those instances in which they are used, sometimes, for further reference, who would they be used by? A. Primarily by me. If anyone else had any question, however, about a youngster, whether it be another Master, whether it be a Probation Officer, we could go to the file and pull the notes and discuss, at least, what the notes would refresh my memory in terms of what happened on that day or in terms of why I made a particular recommendation to the Judge.

Q. Now, in your three and three quarter years as a Juvenile Court Master, how often, if to any extent, have you had occasion to share the contents of those notes with the Juvenile Court Judge? A. You mean in terms of — at any time?

Q. Well, let me clarify — while the case — prior to the case being — an Order being signed in the case by the Judge? A. Never.

Q. Never? A. Never.

Q. After the Hearings that you've had and I'm referring now to the various range of Hearings that you have in delinquency cases, does there ever come an occasion when you have or you have your office prepare a proposed Order for the Judge to sign? A. Yes.

Q. Now, in those instances in which that is done, that is, a proposed Order is prepared, what, if any information would be contained, placed by you or your Bailiff on either the face of the Order or the back of it, purporting to set forth what actually took place at the Hearing, that is, evidence and testimony, say? A.

Well, in the first place, there is only two instances in which I would prepare memoranda and an Order. There is only one instance in which I would prepare the Order, I am sorry, two instances where I would prepare a memoranda.

If I were recommending that a youngster be detained, there is a memoranda that we prepare and make a part of the Clerk's file. I don't send that to the Judge, though. I simply include it in the Clerk's file, and it is sent back to the Clerk's Office.

In those cases where we commit or recommend that the youngster be committed to a juvenile institution, then, my secretary prepares the Order and I attach to it a memoranda to inform the Judge of how the case came about, what happened during the adjudicatory Hearing and why I am making this recommendation.

* * * * * *

Q. Now between the time that the hearing in which you recommend Commitment comes to an end and the time that the papers do go to the Judge for signature, what, in fact, would happen to the child? A. It depends on — if it's a recommendation for commitment—

Q. That's what I'm talking about. A. —and the parties do not indicate that an exception to my decision or recommendation is being made on that day, then, the youngster is turned over to the juvenile authorities, transported to the appropriate juvenile facilities and he is housed there.

The Order which is signed, you know, within the — which is signed by the Judge and to which the youngster has a right to take an exception for five days, I suppose you would say relates back, then, to the day he actually is transported to the juvenile facility.

Q. Thank you, now, let's take a case, Master Smith, in which the child has been detained, pending the adjudicatory Hearing and, then, brought in for the adjudicatory Hearing and you make a finding of non-delinquency in that case. What happens to the child

between the time that you make that finding of non-delinquency and the time that the Judge would receive the proposed Order of non-delinquency to sign?

(The Court) You are assuming that the child has been in detention?

(Mr. Smith) I'm assuming that the child was in detention prior to his adjudicatory Hearing.

(The Court) Pending the Hearing?

(Mr. Smith) That's right.

By Mr. Smith:

Q. He comes to the adjudicatory Hearing. You have the Hearing. You make a finding of non-delinquency; what happens to the child between the time that you make that finding and when the proposed Orders are received by the Judge and signed? A. If I have no other basis for recommending that he be kept in custody, he is released.

* * * * * *

By Mr. Smith:

Q. What, if any, authority would you have at that very juncture to release the child immediately to his parents, pending the disposition Hearing which would be held subsequently? A. I would have the authority to release him to his parents or to recommend that he be detained until after additional information is obtained in order to make the appropriate recommendation.

If I recommend he be detained on that day, he would be detained subject, of course, to the right of the youngster to take an exception from that decision. If I recommend he be released, he would be detained, I mean, he would be released and at that time, the State — there may be a difference of opinion whether the State has a right to take an exception. I do not believe they do at that point, because I'm making no recommendation to the Judge. That does not mean they could not seek council with the Judge and ask him to consider what I have done and whether it's appropriate or not. I

have had no cases in which that has been done, but it doesn't mean that they couldn't.

Q. Now, when you said detained or released just now, did you mean immediately detained and immediately released? A. Yes, when I recommend release, it means immediately. It means, if he is in custody, if the Sheriff is in the room, or if someone has physical custody of him, that physical custody terminates at that point.

* * * * * *

By Mr. Smith:

Q. And, where the Judge ordered him detained pending trial, if such a case were then assigned to you for trial and you concluded, at the end of the trial that you're recommending "delinquent act sustained," but you want to postpone the disposition Hearing, would you, in that instance, have the authority to release the child to his parents immediately pending disposition?

(The Court) Is this a question of law or a question of practice?

(Mr. Raum) It's a question of law, Your Honor, the way it's phrased.

(The Witness) It happens often.

(The Court) I think it was phrased as a question of law.

(Mr. Smith) Let me phrase it in terms of the practice.

(The Court) The question is whether it has happened, whether the Judge is the one who had ordered the detention pending trial and the witness has concluded the act is sustained, would he have the right to release the child?

(Mr. Smith) If he wished to postpone the disposition Hearing, would, in practice, you ever have occasion to release the child immediately pending the disposition Hearing?

(The Witness) You have to remember that the Order from the Judge is just that this youngster should be detained until the adjudicatory Hearing. If the adjudi-

catory Hearing is assigned to me, and I hold it, I have the authority at that point to make subsequent recommendations.

(The Court) Because the Order was for pending trial.

By Mr. Smith:

Q. And, would that include the option of his immediate release? A. Yes.

* * * * * *

Q. Now, during your three and three quarter years as a Master in Juvenile Court, when, if at all, has there been the occasion when the Judge has returned to you a proposed Order with instructions to modify or change that Order in any way? A. Never.

* * * * * *

(The Court) You said he never consulted you, that he changed the Order; have you ever discussed with a Judge when you made a recommendation, one way or the other, has the Judge ever asked you to talk to him about the matter before he decided what to do?

(The Witness) Before he decided — No, Your Honor, on only — there has only been about three or four occasions during the entire period of time I have sat there that I discussed a case that was before me with the Judge. In two instances, it was because of correspondence that came in, addressed to the Judge and he referred it to me and I discussed those two cases. These were not cases he was going to hear, de novo, however. In one case, it was because of a review of Court Order Hearing which I had held and denied to change or to recommend that the Order be changed and the person wished to take an exception from that and the Judge did discuss that case with me. He decided it was no right to an exception because I took no action and made no recommendations, but if you mean, has the Judge ever discussed with me why I'm recommending an Order or why he should sign an Order before he signed it, no, he has not.

(The Court) So, so far as you know, he has always adopted your recommendation?

(The Witness) As far as I know, he has adopted it in 100 per cent of the cases.

* * * * * *

By Mr. Smith:

Q. Do you ever observe, actual, either physical reactions or hear statements on the part of the respondent after you announce your finding? A. Yes.

* * * * * *

By Mr. Smith:

Q. Would you indicate, if you can, what the nature of those typical reactions or statements would be?

(The Court) The nature — don't they run the gamut?

(The Witness) I guess that's the correct statement about — they do. It's — it depends on what the recommendation is. If it's — if it's at the end of the adjudicatory Hearing and, incidentally, we make a finding at the end of the adjudicatory Hearing. I make no recommendation to the Judge at that time. Normally, it's a reaction to the realization that I have decided that the youngster did or he didn't do it. The reactions may be from the complaining witness or from the respondent. Usually, he is happy if his charge is not sustained. He's sad if it is or from his parents. The reactions come in, however, more prevalently at the disposition Hearing, when I'm making a recommendation to the Judge because, here, they realize that the recommendation is for some action. If I'm recommending detention, the youngster may cry. He may get upset. His parents might get emotionally upset. They may say, please don't take my child, please give me a break, put me on probation, let me walk, any number of things, I've learned my lesson, any number of things, but there is the usual reaction, especially the reaction is more severe, depending on how negative it is as far as the youngster is concerned.

* * * * * *

RUTH KENT

(T. 331-334, 336-338, 340-341)

Q. Mrs. Kent, I'd like to direct your attention to August 16, 1974, and ask you if you had occasion, if there was occasion for you and your son to be in the Juvenile Court of Baltimore City on that day? A. Yes, we were.

Q. Why were you there? A. On August 16, I received a summons to appear in Master O'Grady's Court with my son, Andre.

Q. And, when you appeared in Court that day, did you, in fact, meet Master O'Grady? A. Yes, I did.

Q. And, when you met him, who did you think he was? A. At that particular time, I thought he was a Judge.

(Mr. Raum) Objection, what difference does it make who she thought he was.

(The Court) I'll take it subject to exception and if I give any weight to it in an opinion or if the Court gives any weight to it in its opinion, they will indicate.

By Mr. Elder:

Q. Mrs. Kent, did Master O'Grady announce a finding and recommendation at the end of your son's trial? A. Yes, he did.

* * * * * *

By Mr. Elder:

Q. What finding and recommendation did Master O'Grady announce at the end of your son's trial? A. He found him not guilty.

Q. And, when he announced his finding and recommendation, what did you personally believe the status of the case to be?

(Mr. Raum) Objection, totally irrelevant.

(The Court) Overruled.

By Mr. Elder:

Q. You may answer. A. Well I thought the case was over with and that I could take my son home and we could continue to live normal lives.

* * * * * *

By Mr. Elder:

Q. Now, Mrs. Kent, immediately after the Hearing, what, if anything did your son say in your presence which would indicate what his belief was at that time with regard to the status of the case? A. Well, he was relieved and he made the statement that he was glad that it was all over with because it was a long process of the procedures of the trial.

* * * * * *

Q. Did you notice any differences between the way the trials were conducted the first time in Master O'Grady's Court and the second time in Judge Hammerman's Court?

* * * * * *

(The Witness) I couldn't see any difference because in Master O'Grady's Court, there was the Judge. At that particular time, I thought he was a Judge, sitting making his ruling and what have you and witnesses were called and the same type of thing happened in Judge Hammerman's Court, so I can't see any difference.

Q. Mrs. Kent, were you employed on the date of the Master's Hearing? A. The Master's—

Q. Master O'Grady's Hearing? A. That was in August.

Q. Right. A. The type of work I do, I only work 10 months out of the year, so in August, I would not be employed.

Q. What kind of work do you do, by the way? A. I'm an educational assistant. I work with the Department of Education. I'm presently employed at School 27, that's 100 South Chester Street.

Q. And, I gather school was not in session on August 16th, the date of Master O'Grady's Hearing? A. Right.

Q. And was school in session on the dates of the two Hearings which you referred to before Judge Hammerman? A. Yes.

Q. And, did you lose any compensation as a result of having to appear in Court on those dates? A. Yes and no. I called in and I told the secretary that I would not be in on those particular days.

Now, I think one day I got paid for, and one day I did not get paid for and they have the secretary mark my time. I do not know.

Q. So, you lost only one day? A. Yes.

* * * * * *

By Mr. Elder:

Q. One final question, Mrs. Kent, what was your state of mind with regard to having to appear the second time for trial in front of the Judge after having heard Master O'Grady make a finding that your son was not delinquent? A. I was totally upset. I could not understand getting a second summons in the mail stating that I would have to appear in Court for the second time, when at the first time that the case had been dismissed, my son was let go and, then, to be humiliated again, to go to Court and be subjected under those types of conditions, I was really upset, to no end.

* * * * * *

ROSA CAMPBELL

(T. 344-345, 347-350)

Q. Now, I would like you to refer back to August 16, 1974, and ask you whether you had occasion to be — where you had occasion to be on that date, if you remember? A. Yes, I got a summons in the mail for me to bring William down to Court for that date.

Q. And, did you come down that day? A. Yes. I did.

Q. And, could you tell me to what courtroom you went? A. I went to Court II, in the Juvenile Courtroom.

Q. Do you remember who was the person who was conducting the proceedings in that Court? A. Yes, Master O'Grady.

Q. Now, when you saw Master O'Grady who was conducting the proceedings, who did you think Master O'Grady was? A. I thought he was the Judge.

Q. Now, what, then, happened in the courtroom, Mrs. Campbell? A. They had a trial and everything and, then, my son William was found not guilty.

Q. And, who was it who made that finding of not guilty? A. Master O'Grady.

Q. Now, at the time, right after Master O'Grady announced that finding of not guilty, what did you and your son then do? A. We was happy and relieved that it was all over with, so we thought everything was all over and we just left the courtroom and went home.

Q. Now, did you, thereafter, ever have occasion to return to the Juvenile Court? A. Yes, I got another letter saying that I should bring William back to Court, again.

Q. Now, what was the difference, if any, between that second letter and the first one, if you remember? A. Not any that I remember.

Q. Now, what did you do after you received that letter saying that you should bring your son back to Court, again? What did you next do? A. I was very upset because I knew William hadn't did anything else and I was wondering what was wrong, so I also worked for an attorney, so I called him and I asked him could he be tried for the same thing twice.

* * * * * *

By Mr. Smith:

Q. Now, when you did return to Court for that second Hearing, who was that before? A. Master — I mean, Judge Hammerman.

Q. Judge Hammerman? A. Yes.

* * * * * *

A. Judge Hammerman tried the boys and he didn't make a decision. He had them to come back on the 18th of October.

Q. And, what happened on the 18th of October? A. He placed my son, William, into Maryland Training School.

Q. Maryland Training School? A. Yes.

Q. Now, Mrs. Campbell, what, if any, differences did you observe between the manner in which the Hearing was conducted before Master O'Grady in August and the manner in which the Hearing was conducted before Judge Hammerman in September? A. The only differences that I seen was when Master O'Grady's Hearing, we all sit in the courtroom and heard the testimony and Judge Hammerman, we didn't. He asked them all to go out and they testified, like, coming in whenever they was called. That's the only difference I can—

(Mr. Smith) Thank you.

(The Court) That is, the witnesses?

(The Witness) The witnesses, yes.

By Mr. Smith:

Q. Now, after your son was — At the conclusion of the second Hearing before Judge Hammerman, that is, the second Hearing, would you tell the Court what your state of mind was with respect to the matter of your son having been first tried before Master O'Grady and secondly before Judge Hammerman? A. Well, I was so hurt and disgusted and worried to think my son had been tried once and found not guilty and had to be tried again for the same thing and found guilty and I was very upset about it.

Q. Now, Mrs. Campbell, do you have employment? A. Yes.

Q. And, what is your employment? A. I does domestic work.

(The Court) I didn't hear what you said.

(The Witness) Domestic work.

By Mr. Smith:

Q. Now, on the occasion of August 16, the Hearing before Master O'Grady, if you had not been at that Hearing, would you have been employed on that day? A. Yes, I would.

Q. And, on the occasion of the two Hearings before Judge Hammerman, one was September 16 and the other one was October 18, would you have been employed on either of those days, if you had not been at that Hearing? A. Well, on September 16th I would not have been working because at that time I didn't work on Monday, but on the following October 18th, yes, I was working.

* * * * * *

PLAINTIFFS' EXHIBIT 39

HEARINGS IN DELINQUENCY CASES BEFORE THE MASTERS, CIRCUIT COURT OF BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES, BY MONTH, FOR CALENDAR YEAR 1974.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Totals
1. Total Number of Petitions—[1]	1203	1118	1089	1542	1492	1352	1376	1238	1286	1369	1035	1213	15,313
2. Total Number of Children[2]	876	835	791	1001	1031	874	942	854	852	973	737	858	10,624
3. Types of Hearings and their Results[3]													
4. Detention Hearings[4]													
5. Children Detained	97	33	55	108	124	105	103	99	147	138	128	124	1,261
6. Children not Detained	77	39	58	77	67	62	42	58	36	52	45	39	652
7. Total of lines 5 and 6	174	72	113	185	191	167	145	157	183	190	173	163	1,913
8. Waiver Hearings[5]													
9. Children Waived	11	10	7	16	39	34	24	17	27	18	18	13	234
10. Children Not Waived But Detained	0	3	2	6	8	8	6	2	2	1	1	1	40
11. Children Not Waived and Not Detained	6	1	0	3	9	2	9	6	7	1	2	0	46
12. Subcuria and Detained	3	0	0	7	7	5	8	1	1	3	0	0	35
13. Subcuria and Not Detained	0	0	0	1	2	2	3	0	0	2	1	2	13
14. Total of lines 9-13	20	14	9	33	65	51	50	26	37	25	22	16	368
15. Adjudicatory Hearings[6]													
16. Dismissed by State's Attorney[7]	196	300	272	296	237	233	239	249	191	202	128	235	2,778
17 Dismissed by Court[8]	9	20	10	22	17	24	28	11	21	28	17	21	228
18. Delinquent Act Not Sustained[9]	58	30	47	59	37	37	33	41	26	54	35	27	484
19. Delinquent Act Sustained But No Delinquent Child[10]	7	19	7	23	19	22	21	8	10	20	14	17	187
20. Delinquent Act Sustained and Delinquent Child — Disposition Postponed													
21. Child Detained Pending Disposition Hearing	56	57	26	39	51	52	32	35	39	53	50	56	546
22. Child Not Detained Pending Disposition Hearing	101	89	87	108	83	80	86	90	79	136	83	100	1,122
23. Total of Lines 16-22	427	515	449	547	444	448	439	434	366	493	327	456	5,345
24. Disposition Hearings Held Immediately After Adjudicatory Hearing[11]													
25. Probation Ordered													
26. To Department of Juvenile Services	87	80	98	102	97	101	78	72	67	84	63	52	981
27. To Parent	20	14	14	11	6	8	12	21	9	13	11	5	144
28. Commitment Ordered	43	51	41	51	64	51	61	44	53	73	47	49	628
29. Restitution Ordered[12]	18	18	23	19	23	23	23	21	11	26	14	18	237
30. Total of Lines 26-29	168	163	176	183	190	183	174	158	140	196	135	124	1,990
31. Disposition Hearings Not Held Immediately After Judicatory Hearings[13]													
32. Probation Ordered													
33. To Department of Juvenile Services	87	35	62	65	80	62	54	72	60	81	79	78	815
34. To Parent	4	0	4	3	7	2	3	5	8	4	4	3	47
35. Commitment Ordered	39	42	34	46	56	27	63	44	69	33	42	40	535
36. Restitution Ordered	9	3	10	7	13	8	8	15	13	14	10	10	120
37. Subcuria	7	8	1	7	0	12	11	16	9	11	12	26	120
38. Total of Lines 33-37	146	88	111	128	156	111	139	152	159	143	147	157	1,637
39. Total of Lines, 7, 14, 23, 30 and 38	935	852	858	1076	1046	960	947	927	885	1047	804	916	11,253

[1] The petition is the document under which the child is charged. It contains a brief statement of the facts alleged to comprise the delinquent act. See Rule 903, Md. R of P. A single child may be charged under one or more petitions and these petitions may or may not relate to one factual incident.

One entry is made on line 1 for every petition which leads to one of the results listed in lines 5 and following. Unless a petition results in a hearing, it is not listed in the tabulation in line 1. However, each time a particular petition results in a hearing, a separate entry is made in line 1. For example, a single child, charged under one petition, has a detention hearing, a waiver hearing, and an adjudicatory hearing. In such a case, three entries would be made in line 1.

[2] One entry is made on line 2 each time a child is given a hearing. The child who is charged in more than one petition for separate offenses is listed only once in line 2 even though multiple petitions are filed against him. However, each time a particular child has a hearing, an additional entry is made on line 2. For example, a single child, charged under one petition, has a detention hearing, a waiver hearing, and an adjudicatory hearing. In such a case three entries would be made in line 2. Since many children are charged under more than one petition, line 1 will be greater than line 2.

[3] The specific meaning of the various types of hearings will be explained in the footnotes below. To understand the method of making entries which commence on line 5, it is necessary to explain the focus of this chart. It is designed to reveal the number and different types of actions which the masters take which lead to 1) orders signed by the judge and 2) a result which affects the juvenile in an immediate and very specific way even though the judge does not become involved through the signing of an order. Thus, the chart follows the procession of the child through the various stages of the court process, commencing with the detention hearing and ending with the disposition hearing, and records separately each court appearance in which one of the results listed in lines 5-37 is reached.

The following examples illustrate the method of making entries on the chart:

A. Single child-single petition.

— A single child charged under a single petition has a waiver hearing and jurisdiction is waived. The following entries would be made on the chart:

i) one entry on line 1.
ii) one entry on line 2.
iii) one entry on line 9.

— A single child charged under a single petition has a disposition hearing not immediately after the adjudicatory hearing, at which the master recommends committment and restitution. The following entries would be made on the chart:

i) one entry on line 1.
ii) one entry on line 2.
iii) one entry on line 35.
iv) one entry on line 36.

B. Single child-multiple petitions.

— A single child charged under three petitions has a waiver hearing on each petition and jurisdiction is waived on each petition. The following entries would be made on the chart:

i) three entries on line 1.
ii) one entry on line 2.
iii) one entry on line 9.

— A single child charged under five petitions has an adjudicatory hearing in which two of the petitions are dismissed by the State's Attorney, the third petition is dismissed because the delinquent act is not sustained, and the remaining two petitions result in a finding that the child committed the delinquent acts. A disposition hearing is held immediately thereafter, and probation to the Department of Juvenile Services and restitution is recommended. The following entries would be made on the chart:

i) five entries on line 1.
ii) one entry on line 2.
iii) one entry on line 16.
iv) one entry on line 18.
v) one entry on line 26.
vi) one entry on line 29.

[4] A detention hearing is a hearing held pursuant to Ann. Code of Md., Cts. Art., § 3-823 and Rule 909, Md. R. of P., at which a judge or master determines whether or not the child should be detained in a training school or shelter care facility or returned to his home, pending further hearings in his case.

[5] A waiver hearing is a hearing held pursuant to Ann. Code of Md., Cts. Art., § 3-823 and Rule 911, Md. R. of P., at which the juvenile court judge or master determines whether or not the child should remain within the jurisdiction of the juvenile court for trial or be transferred to the Criminal Court for trial under procedures and with sanctions that apply to adults charged with crime. If the master or judge concludes that the child should not be waived, a further decision is made whether he should be detained or released to his family pending trial on the merits.

[6] The adjudicatory hearing is a hearing held pursuant to Ann. Code of Md., Cts. Art., § 3-829 (a) and Rule 912, Md. R. of P., at which the judge or master determines whether or not the child has committed the delinquent act charged in the petition. In some cases, the child decides to admit the charge (the functional equivalent of a guilty plea) at the commencement of the adjudicatory hearing. He may similarly admit at a pre-adjudicatory hearing called for the purposes of arraigning him or to determine whether or not he should be detained pending his adjudicatory hearing. Where such admissions were made, those cases were included in the category of adjudicatory hearings and then classified in the appropriate sub-category.

[7] This category includes those cases in which the matter was called for hearing on the merits (i.e. adjudicatory hearing) and the State's Attorney then proceeded to dismiss the case.

[8] This category includes those cases in which the matter was called for an adjudicatory hearing and where the master or judge, either prior to the taking of any testimony or prior to the conclusion of testimony, dismissed the petition on his own initiative rather than on the initiative of the State's Attorney.

[9] This category includes those cases in which the master or judge, after the presentation of testimony at an adjudicatory hearing, concludes that the delinquent act was not sustained (the functional equivalent of a not guilty finding).

[10] This category includes those cases in which the judge or master determines that the child committed the delinquent act alleged in the petition but subsequently concludes that he is not a "delinquent child." The Juvenile Causes statute defines a "delinquent child" as a child "who commits a delinquent act and who requires supervision, treatment, or rehabilitation." Ann. Code of Md., Cts. Art., § 3-801 (k). Thus, a child who is not deemed to need supervision, treatment or rehabilitation may not under the law be deemed a "delinquent child" even though he has committed a "delinquent act." When the judge or master concludes that the delinquent act is sustained but the child is not a "delinquent child", he terminates the jurisdiction of the court over the child by dismissing the petition.

[11] The disposition hearing is the hearing held pursuant to Ann. Code of Md., Cts. Art., § 3-829 (b) and Rule 913, Md. R. of P., at which the judge or master determines whether the child requires supervision, treatment or rehabilitation, and, if so, what type of treatment program should be implemented in his case. The disposition hearing is a distinct and separate proceeding from the adjudicatory hearing. In some cases it commences immediately after the adjudicatory hearing is completed and in other cases it is heard several days or more after the adjudicatory hearing has been completed. Lines 25-29 categorize disposition hearings which took place immediately upon the conclusion of the adjudicatory hearing.

[12] This category includes those proceedings in which the master or judge concludes that the child or his parents should make restitution for property destroyed or stolen or medical expenses incurred as a consequence of the child's committing a delinquent act. The authority for restitution is contained in Ann. Code of Md., Cts. Art., § 3-839 and Rule 922, Md. R. of P. The matter of restitution may be considered at a separate hearing in which only the issue of restitution is considered or as part of the overall disposition hearing. Because the matter may be considered separately and in any event calls for a special order, restitution is specially categorized.

[13] The matters categorized in lines 32-37 include disposition hearings which are not held on the same day that the adjudicatory hearing is held. Normally, the time delay between the adjudicatory hearing and disposition hearing classified here would be a week or more. See fn. 11, *supra*.

PLAINTIFFS' EXHIBIT 40

HEARINGS IN DELINQUENCY CASES BEFORE THE JUDGE, CIRCUIT COURT OF BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES, SHOWING ORIGINAL HEARINGS AND EXCEPTION HEARINGS FOR CALENDAR YEAR 1974.

		Original Hearings	Exception Hearings	Totals
1.	Total Number of Petitions	960	373	1333
2.	Total Number of Children	502	210	712
3.	Types of Hearings and their Results			
4.	Detention Hearings			
5.	Children Detained	36	19	55
6.	Children Not Detained	8	10	18
7.	Total of lines 5 and 6	44	29	73
8.	Waiver Hearings			
9.	Children Waived	42	50	92
10.	Children Not Waived But Detained	7	4	11
11.	Children Not Waived and Not Detained	11	7	18
12.	Subcuria and Detained	1	0	1
13.	Subcuria and Not Detained	1	1	2
14.	Total of lines 9-13	62	62	124
15.	Adjudicatory Hearings			
16.	Dismissed by State's Attorney	111	14	125
17.	Dismissed by Court	6	2	8
18.	Delinquent Act Not Sustained	30	11	41
19.	Delinquent Act Sustained But No Delinquent Child	6	0	6
20.	Delinquent Act Sustained and Delinquent Child — Disposition Postponed			
21.	Child Detained Pending Disposition Hearing	48	29	77
22.	Child Not Detained Pending Disposition Hearing	46	24	70
23.	Total of Lines 16-22	247	80	327
24.	Disposition Hearings Held Immediately After Adjudicatory Hearing			
25.	Probation Ordered			
26.	To Department of Juvenile Services	14	4	18
27.	To Parent	0	0	0
28.	Commitment Ordered	27	13	40
29.	Restitution Ordered	2	2	4
30.	Total of Lines 26-29	43	19	62
31.	Disposition Hearings Not Held Immediately After Adjudicatory Hearings			
32.	Probation Ordered			
33.	To Department of Juvenile Services	67	7	74
34.	To Parent	3	0	3
35.	Commitment Ordered	63	18	81
36.	Restitution Ordered	18	3	21
37.	Subcuria	12	1	13
38.	Total of Lines 33-37	163	29	192
		559	219	778

PLAINTIFFS' EXHIBIT 41

TYPES AND NUMBERS OF ORDERS ENTERED IN DELINQUENCY CASES HEARD BEFORE THE JUDGE AND MASTERS, CIRCUIT COURT OF BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES, CALENDAR YEAR 1974*

Types of Orders	*Judge*	*Master*	*Total*
Orders Flowing From Delinquency Hearings			
Detention Hearings			
Children Detained	36	1261	1297
Waiver Hearings			
Children Waived	42	234	276
Children Not Waived but detained	7	40	47
Sub curia and Detained	1	35	36
Adjudicatory Hearings			
Delinquent Act Not Sustained	30	484	514
Delinquent Act Sustained — Child Detained pending disposition hearing	48	546	594
Disposition Harings			
Delinquent Act Sustained			
Probation to Department of Juvenile Services	81	1796	1877
Probation to Parent	3	191	194
Commitment Ordered	90	1163	1253
Restitution Ordered	20	357	377
Total	358	6107	6465
Other			
Dismissals from Probation			2007
Termination of After-care supervision			689
Rescission of Committment to Institution			
Without after-care supervision			150
With after-care supervision			531
Total			3377
Grand Total			9842

* Orders issuing from Exception Hearings before the judge are not counted on this table in determining the number of orders. When an exception is taken from the Master's

PLAINTIFFS' EXHIBIT 42

TYPES AND NUMBERS OF DECISIONS MADE IN DELINQUENCY HEARINGS BY THE MASTERS, CIRCUIT COURT OF BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES, CALENDAR YEAR 1974, IN WHICH CUSTODY OF AND JURISDICTION OVER THE CHILD IS AFFECTED AND IN WHICH THERE IS NO REVIEW BY THE JUDGE.

Type of Decision	*Number*
Detention Hearings	
Children Not Detained	652
Waiver Hearings	
Children Not Waived and Not Detained	46
Sub curia and not detained	13
Adjudicatory Hearings	
Dismissed by the Court	228
Delinquent Act Sustained but No Delinquent Child	187
Delinquent Act Sustained — Child Not Detained Pending Disposition Hearing	1122
Total	2248

recommendation, the Judge does not sign an order until the exception hearing is held and a final decision is made therein. However, in gathering the data for the Masters' chart, there was no way to determine the number of times exceptions were taken to their decisions. Their recommendations were recorded regardless of whether or not an exception was eventually taken. Thus, data on this table would be inflated by including orders issuing from the Judge's exception hearings. To offset this inflation, the orders issuing from these exception hearings are not included in this table. The two totals, the number of Masters' recommendations to which exceptions were taken and the number of orders issuing from exception hearings, are approximately equal for any calendar year.

PLAINTIFFS' EXHIBIT 46
(T. 14, 23-25, 49-51, 60-62, 87-88, 90-91)

MICHAEL JOHNSON,

was called as a witness on behalf of the State, and after having been first duly sworn according to law, was examined and testified as follows:

* * * * * *

By Mr. Posner:

Q. Now, you said that was the date that Philip broke into the house. Did you know he broke into the house? A. Yes.

Q. How did you know that? A. He told me.

Q. When did he tell you, that evening? A. About 6:00 o'clock.

Q. I thought you said it was about 8:00 o'clock. A. I said that's when he told me, about 6:00 o'clock.

(The Court) What you're saying is that he told you that he broke into the house of Mr. Chambers before you saw him with the bicycle; is that what you're saying?

(The Witness) He told me — well, they wanted me to go with them.

(The Court) Before they broke in?

(The Witness) Uh-huh.

(The Court) And you said no?

(The Witness) Right.

(The Court) And you testified earlier about him wanting you to go, but that was — you're saying this happened before the house was broken into?

(The Witness) Uh-huh.

(The Court) This was about 6:00 o'clock?

(The Witness) Uh-huh.

(The Court) And it was about 8:00 o'clock or 8:30 that you saw him on the bicycle?

(The Witness) Right.

(The Court) And he said he got it from Mr. Chambers' house?

(The Witness) Uh-huh.

(The Court) At 6:00 o'clock, did he tell you that he was going to break in, or he had broken in?

(The Witness) He told me he was going to.

(The Court) And wanted you to join him?

(The Witness) Right.

(The Court) Was it just Philip that asked you?

(The Witness) Uh-uh, about three other boys.

(The Court) And Philip was one of those?

(The Witness) Uh-huh.

(The Court) And you said, no?

(The Witness) Uh-huh.

(The Court) What did they say after you said no?

(The Witness) They didn't say nothing. I just walked away.

* * * * * *

(The Witness) The defendant, Witherspoon, told me that on the night in question himself, in company with a friend, and he described him as Mikey, Michael Harris, and Roland Lofton, who are also co-defendants and have been charged, approached the rear door of 5109 Pembridge Avenue. He stated that Michael Harris broke the window, reached in and opened up the door, at which time Roland Lofton, Michael and Philip entered the house, and Philip helped carry one of the bicycles out of the house, and they all rode together, down out of the alley, and down Pembridge Avenue to the rear of their house, and they put the stuff in the house, and—

(The Court) The stuff, you mean the bicycles?

(The Witness) The bicycles. I believe they had a coat at that time. Then he said that Mikey and Roland still went back several times and removed additional property. He stated he wasn't, didn't go back the other times.

(The Court) He says he just went in the one time?

(The Witness) The first time, when the entrance was made.

By Mr. Katz:

Q. Did he give you any information as to where this property would be that he had taken out? A. He said it was in the basement at that time.

Q. Basement of— A. Of his house. The night of the burglary, he stated that.

Q. Where does Philip live? A. 5110 Pembridge Avenue, directly across the street from the victim.

Q. And acting on that information, what did you find? A. There was no — well, I spoke to Ms. Witherspoon again, and got her permission to look in her basement. She accompanied me to look in the basement, and we found no property.

* * * * * *

(Mr. Posner) All right, sir. And getting to Detective Barger, I again, I feel very strongly that the statement of rights is defective, for the reason that by Detective Barger's own statement, that one, there was some confusion in Philip's own mind as to whether or not he wanted a lawyer at that point, which is freely acknowledged in the testimony by the Detective, and the boy then at first writes yes, and then upon a further questioning by — or asked him another question evidently, obviously to clear it up, and Detective Barger says he then scratched it out and wrote, no, if Your Honor please, and I also understand that the boy's mother was there. Unfortunately, I have been trying to get her here today, and she's working, and unable to be

here. The sister tried to reach her, and evidently was unable to.

(The Court) The mother is not here today?

(Mr. Posner) The sister is here, but not the mother.

(The Court) The sister of the respondent or of the mother?

(Mr. Posner) The sister of the respondent is here.

(The Court) Of course, I was unaware of that. You never made any request for postponement of the case for purposes of getting the mother here—

(Mr. Posner) Well—

(The Court) I noticed a lady in the Courtroom, and I just assumed it was the mother.

(Mr. Posner) I am going to request that the matter be continued so that we can get the mother in here, if Your Honor please, even if it's later this afternoon or tomorrow.

(The Court) The motion is denied. It's very untimely.

* * * * * *

(The Court) Philip, do you want to stand, please? Philip, I am going to find you delinquent in this petition for the reasons stated in the petition, which means, in fact, that I am finding you guilty of this charge against you.

* * * * * *

But Michael Johnson very directly pointed a finger at you. Michael Johnson testified that at 6:00 o'clock that evening you and three other boys approached him and asked him to participate with you in the breaking and entering of Mr. Chambers' home; that you discussed it with him and asked him to participate, and that he said no. He was not going to, and then at about 8:00 or 8:30, he saw you in the alley behind Mr. Chambers' home, four doors from the home, riding a ten-speed bicycle.

Michael testified, and without contradiction from you, that you never had a bicycle, and he knew you well, and that you told him that you took it out of the house next to Mr. Boser, which is 5109 Pembridge. That's where you got it; that you had it with you. Quite frankly, I believe totally the testimony of Michael Johnson.* * *

* * * * * *

The testimony of Detective Barger was that you admitted to doing this, that you admitted that with three other boys you broke in and that you took the bicycle yourself. You didn't go back another time as the others did, but that you were part and parcel of this. You admitted that you told that to the detective. You admitted that you said that, but you're saying it wasn't the truth. That the only reason you said that to Detective Barger is — was because Detective Barger told you that if you would admit that you did it, he would let you go, and you could go back to school. Yet you admitted on cross examination that it wasn't even a school day. There was no school to go back to, at least that day, and your testimony I just don't believe, and I want to make it very clear that even if there was no statement given by you to Detective Barger, even if that was not an issue at all, I would still find you delinquent. I would still find you guilty. I would find you guilty and delinquent on the basis of Michael Johnson's testimony. To me that is wholly sufficient, and I wholly believe it. I want to make that very clear.

* * * * * *

PLAINTIFFS' EXHIBIT 49
(Pp. 1, 2, 4, 5)

The following attachments contain information relating to the delinquency hearings before the Masters assigned by the Circuit Court of Baltimore City, Division for Juvenile Causes, of the plaintiffs in *Donald Brady, et al. v. William Swisher, et al.*, Civil Action No. T 74-1291, and the petitioners in *Andre Aldridge, et al. v. James Dean, et al.*, Civil Action Nos. T-74-1300-1308.

Each attachment relates to a separate hearing and each contains the following information:

1) Name of the child who was the respondent in the delinquency hearing;

2) Petition number under which the child was charged;

3) Recitation of the charge contained on the petition;

4) Witnesses testifying at each hearing;

5) Summary of the substance of each witness' testimony;

6) Finding of the Master;

7) Basis for the Master's finding;

8) Name of the Assistant State's Attorney who represented the petitioner;

9) The basis for the exception taken by the Assistant State's Attorney.

The attachments are not intended as nor are they in fact transcripts of what took place at the hearings. Thus, the summary of the substance of the witnesses' testimony is not a verbatim copy of what each witness said at the hearing. However, the summaries are a complete and accurate reflection of the essence of this testimony. Similarly, the finding of the Master and the basis for it are not exact records of what the Master actually stated at the hearing. However, they do reflect completely and accurately the substance of both the finding and its basis. Finally, the basis for the exception taken by the Assistant State's Attorney is not an exact record of what the Assistant State's Attorney may have stated when he filed the exception. However, it does reflect accurately and completely the substance of his reasons for taking the exception.

The information was compiled from the following sources:

1) The petition filed in each case;

2) Notes of the Masters hearing each case of what took place at each hearing and/or conversations with these Masters;

3) Conversations with the Assistant State's Attorneys involved in each case;

4) Conversations with the defense counsel involved in each case.

* * * * * *

In the
Circuit Court of Baltimore City,
Division for Juvenile Causes

Petition No. 014287

In the Matter of
Phillip Witherspoon

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1) *Hearing Date*: June 4, 1974 *Before*: Master Paul Smith

2) *Charge:* On or about January 23, 1974 Phillip Witherspoon unlawfully did break and enter the dwelling house of Michael Chambers located at 5109 Pembridge Avenue in the nighttime, with the intent to steal, take and carry away the goods, chattels, monies and properties of Michael Chambers of the value of $1514.90.

3) *Witnesses testifying at the hearing and the substance of their testimony*:

a) Victim — Michael Chambers

Mr. Chambers testified that he returned home on January 23, 1974 to discover that various pieces of his property were missing.

b) Arresting Officer — Police Agent Greenwald

Agent Greenwald testified that he and Detective Barger spoke with Phillip and his mother at the police station and advised them of their rights to have an attorney.

c) Mother of Respondent — Mrs. Elsie Witherspoon

Mrs. Witherspoon testified that she did not understand the waiver form her son signed nor the explanation the police gave. She also testified that she was at home at the time of the break-in with her son, but that she saw nothing.

d) Respondent did not testify

4) *The Master's finding and the basis for it*:

Master Smith found the delinquent act not to be sustained in this case. He was influenced in his decision by the question of whether or not the respondent had made a waiver of counsel intelligently.

5) *Assistant State's Attorney and the basis for his filing an exception:*

Assistant State's Attorney Dana Levitz filed an exception to the Master's finding that the delinquent act not be sustained because there was no showing made that the waiver of counsel was not intelligently made since respondent did not testify. While the mother may have been confused, this did not mean that her son was also when he signed the waiver.

JOINT STIPULATIONS OF FACTS
PAUL SMITH

Counsel for the parties in the above entitled case stipulate that Paul A. Smith, if called as a witness, would give the following testimony:

1) He is a master in chancery in the Circuit Court of Baltimore City, Division for Juvenile Causes, and has held that position since June, 1971.

2) He had recent occasion to thoroughly examine the testimony he gave on March 18, 1975 in the case of *Brady, et al. v. Swisher, et al.*, and *Aldridge, et al. v. Dean, et al.* In connection with this recent examination of his testimony, he has considered what parts of his testimony would not be the same if he were answering the same questions today. Based on that examination he would make the following nine modifications or additions to that testimony.

First, the employment qualifications for a master assigned to the Juvenile Causes Division are now governed by Ann. Code of Md., Cts. & Jud. Proc. Art., §§ 3-813 and 3-803. See Tr. 226-27.

Second, the duties of the juvenile court master have remained the same except masters no longer hear waiver cases, pursuant to policy of the juvenile court judge. See Tr. 227-28.

Third, normal procedure at present is to advise the child of the right to file an exception after the disposition hearing rather than after the adjudicatory hearing. See Tr. 235-36.

Fourth, in a case in which his finding is "act not sustained", the action he would take with respect to advising the child or his family of the right of the State to take an exception is not uniform; sometimes he advises the respondent of the State's right to take an exception and sometimes he does not. See Tr. 236-37.

Fifth, all orders in cases before him are now prepared by the clerk's office for the judge to sign. See Tr. 239.

Sixth, the only circumstance in which he now sends to the juvenile court judge a memorandum describing his recommended action in a detention hearing is when he recommends that the child be sent to the Maryland Children's Center for diagnostic evaluation. See Tr. 239-40.

Seventh, under statute and court rule in effect since July 1, 1975, a child may be detained no longer than

one court day prior to being brought before a juvenile court judge or master. See Tr. 242.

Eighth, since the summer of 1975, when the present juvenile court judge began sitting in the juvenile court, he has on no occasion discussed with that judge any case before him. See Tr. 254.

Ninth, the juvenile court judge now signs an order if the child is found non-delinquent. See Tr. 263.

3) There are three circumstances in which he normally prepares a memorandum to the juvenile court judge setting forth his findings and recommendations:

a) when recommending commitment;

b) when recommending diagnostic evaluation at the Maryland Children's Center; and

c) when the parties to the proceeding have declined to sign a waiver of their right to receive such a memorandum. See Plaintiff's exhibit 63. In cases in which he finds the child is not delinquent, or cases in which he finds the child is delinquent, but recommends probation, a memorandum is forwarded to the judge only where parties do not sign a waiver form. It is very rare that parties do not execute a waiver form.

4) Since July 1975 the proceedings in his courtroom has been recorded by a tape recorder utilizing four microphones. The recording of proceedings has the effect of making them more complete, thorough, and formal, and causes the proceedings to appear more like a full trial than was the case prior to July, 1975.

STIPULATION

HONORABLE ROBERT KARWACKI

The Plaintiffs, by their attorneys, Peter S. Smith, Phillip G. Dantes, and Michael S. Elder and the Defendants, by their attorneys, Francis B. Burch, Attorney General of Maryland, and Bernard A. Raum, Assistant Attorney General of Maryland, do hereby stipulate that if the Honorable Robert L. Karwacki,

Associate Judge, Supreme Bench of Baltimore City, presiding as Juvenile Court Judge, were called to testify in the above captioned case, his testimony would be as follows:

1. That comparing the case load in Baltimore City Juvenile Court as of today with the case load as it existed prior to August, 1975, the current figures indicate that the court is receiving about 900 petitions per month, alleging delinquency, as compared to approximately 1,300 petitions per month prior to August, 1975.

2. That as presiding Judge of the Juvenile Court he hears all petitions for waiver of jurisdiction of the court originally. Secondly, he hears all exceptions to recommended findings by the Masters, both on the issue of adjudication and disposition, as well as on the issue of detention. In addition, he would normally hear originally the more aggravated type of case, such as murder, rape, or armed robbery, where those charges are within the jurisdiction of this Court under the provisions of the Code. Also, he hears originally all cases wherein the respondent is represented by the Juvenile Law Clinic. In explanation of that procedure, inasmuch as the students who practice as part of that clinic under the supervision of Mr. Smith and Mr. Dantes practice pursuant to Rule 18 of the Rules applicable to admission to the Maryland Bar, he feels a personal responsibility to monitor their performance.

3. That his Court also has jurisdiction under the Juvenile Causes Act over petitions alleging that a child is in need of supervision and that a child is in need of assistance of the Court. These non-delinquency petitions, which represent a small portion of the total case load of this Court, sometimes involve detailed hearings. For specific figures, he would refer to the office statistics. He would estimate that approximately ¾ of a day per week of his time is personally taken up by hearing some of these cases originally and hearing exceptions from Master's recommendations in other

cases, as well as by considering reports with regard to review of commitments and placement of these children who have previously been before the Court on such petitions.

4. That he spends approximately ten hours per day in the Courthouse. Of that ten hours, he would estimate that he spends approximately 6-6½ hours engaged in matters in Court or Chambers related to hearings. The balance of the time is spent reviewing recommendations of the Masters and in conferring with the Masters and in the general administrative duties related to his position as the head of the Juvenile Court System in Baltimore City, which of course is assisted by seven Masters in the performance of its duties.

5. That according to the statistics which were furnished in August of 1975 when he assumed his duties as the presiding Judge in the Juvenile Court in Baltimore City, (these figures being supplied by the Administrative Office of the Courts and being compiled by the State Computer) there were outstanding approximately 6,000 petitions which were untried as of that date. The most current report from the Administrative Office of the Courts, covering the period through March of 1976, showed that at the end of that period there were pending 674 petitions. This would include both delinquency and non-delinquency petitions. As a practical matter, there is no backlog in the Juvenile Court of Baltimore City. On the average the Court is able to afford a child charged in a delinquency case, or where a child who is brought before the Court alleged to be in need of supervision or in need of assistance, a hearing within 6 weeks of arrest and within two or three weeks of a petition being filed with the Court. The figure just given of 674, of course, indicates that there is no backlog at the present time. Because of what was said earlier about 900 petitions being filed in the delinquency area alone each month, and approximately another 100 filed in the non-delinquency area, the Court will never be able to reduce an existing backlog much below

the 674 figure. At this point it is his judgment that there is no backlog of cases in the Juvenile Court System.

6. That the reduction in case load can be accounted for in a few ways. First, by hearing all waiver petitions originally the Court has drastically reduced what formerly was the largest number of exceptions taken from waiver recommendations by Masters. The time required of Masters to hear those kinds of cases, is eliminated allowing them to devote their time to the remaining matters before the Court. Secondly, with the advent of recording of all Master's hearings, there has been a dramatic decrease in the number of exceptions filed from recommended findings of the Masters. Since August of 1975, Judge Karwacki's figures indicate that we have had 134 exceptions filed and of that number he estimates that he has sustained no more than about 15 of those exceptions. This indicates that the Masters are recommending the right results in the cases which they are hearing. Thirdly, the Court has, with the cooperation of the State's Attorney's Office of Baltimore City and the office of the Public Defender of Maryland (which represents approximately 95% of all respondents before the Court) reached an effective arraignment procedure. More children are admitting to the commission of a delinquent act at the time of their original appearance in Court and thereby rendering further appearances in Court unnecessary and further hearings into adjudication of the delinquency unnecessary. Respondents are represented by the Public Defender's Office or private counsel unless the Master or Judge determines that they have waived counsel.

7. That until about six weeks ago, the Juvenile Judge was receiving exceptions to both adjudicatory hearings and recommended findings therefrom, as well as recommended findings from dispositional hearings. As of that time, Judge Karwacki has started the practice of refusing to accept an exception to a recommended finding after an adjudicatory hearing until such time as the Master completes his disposition hearing and also enters a recommended finding as to

disposition. Of course, at any time the Court will hear a recommended order with regard to detention or an exception from a detention order entered by a Master. That is always immediately heard by the Court and at the present time the Judge is hearing them on the same day that the recommendation of detention is made. And, as long as the case load remains manageable as it is right now, that will continue to be done.

8. That the rules require that whenever a Master holds an adjudicatory hearing and a dispositional hearing that he must submit the case to the Judge for order accompanied by a memorandum of his proposed findings and a recommendation by him based on the record. In the great majority of all recommended findings by the Masters, the respondent, counsel for the respondent and the respondent's parents or guardian, indicate at the time of the hearing before the Master that they are satisfied with the reasons given by the Master on the record for his recommended findings of facts and conclusions of law. A written waiver of the rules requirement that a written memorandum be prepared is executed by the respondent and counsel and his parent or guardian. The form used for this purpose has been introduced in this proceeding as Plaintiff's Exhibit No. 63. Judge Karwacki, therefore, receives a small percentage of memorandum pursuant to the rule in the many cases which flow through the Masters. He insists, however, that notwithstanding a waiver, that if any commitment and or detention is ordered by the Master that a written memorandum outlining the Master's findings of facts and conclusions of law accompany his recommended disposition of the case where either commitment or detention is indicated. In the last month, the Judge's statistics indicate that there were 75 such memoranda submitted to him for review. In those cases, those memoranda are reviewed, the soundness of the recommended findings of fact and conclusions of law are analyzed, and where Judge Karwacki feels the need, although this is done very

infrequently, he actually will review a tape of the proceedings prior to signing a recommended order.

9. That as much time as is required is given to the consideration of each individual case as it is presented to Judge Karwacki. He estimates the minimum time would be 15 to 20 minutes, although he has spent as much as two and three hours on one memorandum. As already indicated, he reviews about 75 of these memorandum per month.

10. That there have been exceptions taken specifically by the State since August of 1975 in which the question of double jeopardy had been raised. The actual number which actually proceeded to a hearing is two or three. In each of those cases, Judge Karwacki has, in following the Court of Appeals decision in the matter of *Anderson,* ruled that the respondent has not been placed in double jeopardy by having the exception reheard before him. In two of the three, if his recollection serves him correctly, Judge Karwacki agreed with the Master below. In the third, which was an exception from a disposition of a Master who had recommended probation and where the Judge committed the child to a training school, he in effect granted the exception. The Judge believes no appeal has been taken from that action.

11. That, while the judge and masters do not discuss a specific case in regard to adjudication or dispositions, there is nonetheless a continuing dialogue between the judge and masters as to matters coming before the court in regard to procedure, treatment and other matters which could affect children before the court. Additionally, the judge meets with the masters each Wednesday at which time questions are raised respecting situations and issues in concluded cases which have been raised in memoranda previously submitted to him. The cases and memoranda are not identified specifically. However, there is general discussion regarding why certain determinations and dispositions (including referrals for diagnostic evaluation) were made under the given circumstances.

12. That Judge Karwacki is familiar with *Aldridge v. Dean* and was very much aware of it as he prepared to undertake the assignment of the Juvenile Judge of Baltimore City. He believes that by requiring the recording of all proceedings in Juvenile matters before the Masters, that by providing additional personnel in the offices of the State's Attorney of Baltimore City, the office of the Public Defender to handle the case load, by requiring the reports of recommendations of Masters in the cases heard by them where the same is not waived by the parties, their counsel and their parents, that the State has provided a system which is now working. The Juvenile Court is in a position to provide persons charged under the Juvenile Causes Act with delinquency, as well as in non-delinquent matters, with prompt hearings, full hearings and adequate review by the Court. The Judge feels that the changes which have been effected since July of 1975 are in part a reaction to *Aldridge* and, in his opinion, are a good faith attempt by the State to remedy some of the problems which the U.S. District Court recognized in deciding *Aldridge v. Dean.*

13. That at the recent Maryland Judicial Conference the committee on Juvenile and Family Law and Procedure, of which Judge Karwacki is a member, had occasion to submit a report and recommendation to that conference. The report was adopted by the Conference on April 24, 1976 when meeting in business session. The report speaks for itself.

JOINT STIPULATIONS OF FACT
LEONARD BRISCOE, THEODORE HAYES JOHN O'GRADY, BERNARD, AND BRIGHT WALKER

I. Leonard Briscoe, Theodore Hayes, John O'Grady, Bernard Peter and Bright Walker, if called as witnesses, would give the following testimony:

A. They are masters in the Circuit Court of Baltimore City, Division for Juvenile Causes (Juvenile Court) and have occupied those positions since October,

1975, December, 1969, January, 1964, June, 1971, and June, 1971, respectively.

B. They have never discussed with the present judge of the juvenile court any facts or circumstances pertaining to any case assigned to them for a delinquency adjudicatory or disposition hearing during the time such case was pending before them or was pending before the judge following their submission to the judge of their findings, conclusions, and recommendations. They have not discussed with the present judge of the juvenile court any items in any memoranda prepared by them for the judge setting forth findings, conclusions, and recommendations in any cases heard by them.

C. However, while the judge and masters do not discuss a specific case in regard to adjudication or dispositions, there is nonetheless a continuing dialogue between the judge and masters as to matters coming before the court in regard to procedure, treatment and other matters which could affect children before the court. Additionally, the judge meets with the masters each Wednesday at which time questions are raised respecting situations and issues in concluded cases which had been raised in memoranda previously submitted to him. The cases and memoranda are not identified specifically. However, there is general discussion regarding why certain determinations and dispositions (including referrals for diagnostic evaluation) were made under the circumstances.

II. Leonard Briscoe, Theodore Hayes and Bright Walker would further testify that they do not prepare written memoranda for the juvenile court judge in cases in which they recommend that a child be detained pending an adjudicatory or waiver hearing, except when they recommend detention for purposes of a diagnostic evaluation at the Maryland Children's Center.

JOINT STIPULATIONS OF FACTS

HOWARD GOLDEN

* * * * * *

Counsel for the parties in the above entitled case stipulate that Howard Golden, if called as a witness, would give the following testimony:

1) He is a Master in Chancery, Circuit Court of Baltimore City, Division for Juvenile Causes, Baltimore City. As a master since July 2, 1975, he has handled a full-time docket of delinquency and non-delinquency arraignments, adjudications, and dispositions. He received his college degree from the University of Maryland in 1964 and his law degree from the University of Maryland in 1967. After passing the bar in the summer of 1967, he went into private practice. In February of 1972, he became an assistant public defender for the City of Baltimore, and was immediately assigned to Juvenile Court. In September 1972 he became Deputy Chief of the Juvenile Section of the Office of Public Defender for Baltimore City. He remained in that position until July 1975 when he assumed his present position.

2. While working as an assistant public defender, he represented juveniles in delinquency adjudicatory hearings before all the masters, namely Theodore Hayes, John O'Grady, Bright Walker, Avrim Rifman, Bernard McDermott, Bernard Peter and Paul Smith. Five of those seven are presently masters. Master McDermott died in April, 1975 and was succeeded by Master Golden. Master Rifman retired in October, 1975 and was succeeded by Master Briscoe.

3. He has recently read the testimony of Master Paul Smith presented in *Brady v. Swisher* and *Aldridge v. Dean* on March 18, 1975. The testimony given by Master Smith beginning with the words "The delinquency cases" on p. 230 and ending with the words "to be sustained" on p. 231 is an accurate description of how the other six masters he observed in his capacity as public defender conducted their hearings.

4. He has recently read the written stipulation of Master Smith's testimony in which Master Smith makes certain modifications and additions to the testimony Master Smith gave last March. If he were asked the same questions that Master Smith was asked on March 18, 1975, his responses would differ from Master Smith's responses, as modified and added to by Master Smith's written stipulation of testimony, in the following eight respects only:

First, there are times when his secretary will type proposed orders when the printed orders are not adequate.

Second, in one instance since he became a master, he has discussed with the juvenile court judge a case pending before him (Master Golden). In that instance the facts of the child's adjudication and disposition were not discussed. The discussion was limited to whether or not the juvenile court has the power to compel two state juvenile agencies to jointly contribute to the support of a child.

Third, as a matter of personal practice, he does not inform respondents of their right to take an exception to the master's findings nor does he inform them of the State's right to take an exception.

Fourth, he takes very scanty notes on the back of the petition. He takes more copious notes on legal pads but they are normally discarded after the hearing. He considers that his notes are for his use only.

Fifth, his memoranda which he forwards to the juvenile court judge are not as detailed as those described by Master Smith at pages 240-41 of the March 18, 1975 transcript. Since he does not include in his memoranda to the judge any specifics pertaining to the crime itself, he does not believe that the judge, based on a reading of these memoranda, could have any understanding of the nature or amount of evidence present at the hearing.

Sixth, he does not believe that the 30 day detention period provided by law may be extended in the absence

of the respondent waiving his objections to such an extension.

Seventh, if he finds the child not delinquent and the State excepts to his decision of non-delinquency, he would not hold a new detention hearing to extend detention pending the exception hearing before the judge; however, if the original thirty day detention period had not expired, he would hold a hearing to determine whether the child who he found non-delinquent should complete the original detention period of thirty days.

Eighth, he finds the act to be sustained and recommends that the child be found not delinquent in a substantially higher percentage of cases than does Master Smith.

5. There has never been an occasion since he has been a master when the juvenile court judge has sought to discuss with him a case assigned to him.

6. In his role as a public defender appearing before all masters and in his role as a master he has observed that the master is normally addressed by the respondent and his parents as "Judge", "Your Honor", "Mister" or "Master". Furthermore, attorneys address him in those various ways.

7. In both his capacity as a public defender and juvenile master, he has observed reactions similar to those set forth by Master Smith at pages 258-59 of the transcript of March 18, 1975. He has frequently heard statements from respondent and his family at the conclusion of the master's adjudicatory hearing that they were relieved that the trial was over.

8. In his capacity as assistant public defender, he discussed with respondents and their parents the fact that the State was taking an exception to a finding of non-delinquency in the respondent's case. He also represented respondents in the exception hearing before the juvenile court judge. In such situations he frequently had great difficulty in explaining to the parents' and the child's satisfaction why the child must

be retried. In referring to the master's adjudicatory hearing, parents complained to him that their child had already been found not guilty before the "judge".

9. The proceedings heard by him in his capacity as master are recorded on a tape recorder. When he appeared before masters in his capacity as assistant public defender, the proceedings were not recorded. The effect on the proceedings of the tape recording is to make him more conscious of making a record that might be viewed. He more carefully follows all the rules of evidence, and the effect is to give the trials in his courtroom a more formal flavor. He is constantly telling the respondent to speak up, thereby making the child even more aware of the recording.

JUDGMENT

In accordance with the Memorandum and Order of the Honorable Harrison L. Winter, United States Circuit Judge, the Honorable Edward S. Northrop, United States District Chief Judge, and the Honorable Joseph H. Young, United States District Judge, filed September 16, 1977 in the above entitled case, it is

ORDERED AND ADJUDGED:

1. That Md. Ann. Code Cts. & Jud. Proc. Art. Sec. 3-813 and Rule 910e (Rule 911c) Md. Rules of Procedure are unconstitutional to the extent that these provisions permit the State to file exceptions (a) to a juvenile court master's findings of non-delinquency and try the juvenile a second time, before the juvenile court judge, or (b) to a juvenile court master disposition, and seek a new disposition before the juvenile court judge.

2. That defendants, their agents, employees, persons acting in concert with them, and their successors in office are enjoined from taking exceptions to findings of non-delinquency or from taking exceptions to disposition pursuant to Md. Ann. Code Cts. & Jud. Proc. Art. Sec. 3-813 and Rule 910e, Rule 911c, Md. Rules of Procedure.

Dated at Baltimore, Maryland this 19th day of September, 1977.

Signatures Omitted